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In The Supreme Court of the State of Utah

EDWIN PAPSE,

Plaintiff-Appellant,

-vs-

JOHN W. TURNER, Warden, Utah State
Prison,

Defendant-Respondent

Case No.

11,111

BRIEF OF RESPONDENT

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In The Supreme Court of the State of Utah

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-vs-

JOHN W. TURNER, Warden, Utah State
Prison,

Defendant-Respondent

} Case No.
11,111

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Edwin Papse, appeals from an order of the District Court of Box Elder County denying his petition for a writ of habeas corpus.

DISPOSITION IN LOWER COURT

By order dated December 1, 1967, accompanied by Findings of Fact and Conclusions of Law, the Honorable Lewis Jones denied appellant's petition for a writ of habeas corpus.

RELIEF SOUGHT ON APPEAL

Respondent submits that the order of the First District Court denying appellant's petition for a writ of habeas corpus should be affirmed.

STATEMENT OF FACTS

On July 22, 1966, appellant and one George Jackson were arrested and charged with the crime of rape. On August 9 the court appointed counsel for appellant and thereafter defendants were arraigned. At the arraignment, all precautions were taken to guarantee the constitutional rights of appellant and defense counsel informed him of the consequences of a guilty plea. Appellant then entered a plea of guilty. The appellant was sentenced to the Utah State Prison.

In May of 1967, appellant petitioned for a writ of habeas corpus. A hearing was held on the matter on October 30, 1967, and on December 1, 1967, the petition was denied. Appellant filed a second petition which was denied and appellant appeals from the denial of both petitions.

ARGUMENT

POINT I

APPELLANT FAILED TO SUSTAIN HIS BURDEN OF SHOWING THAT HIS GUILTY PLEA WAS NOT VOLUNTARY WHEN THE RECORD SHOWS COUNSEL INFORMED HIM OF THE CONSEQUENCES AND HIS PREVIOUS FELONY CONVICTION GAVE HIM NOTICE OF THE CONSEQUENCES OF SUCH A PLEA.

In a habeas corpus proceeding, the burden is upon the person petitioning for the writ to establish error prejudicing his rights before the writ will be granted. In **State v. Spiers**, 12 Utah 2d 14, 361 P.2d

14, 361 P.2d 509 (1961), the court said, "The burden is upon the defendant to show that he has been denied his constitutional rights." If the burden of affirmatively showing error is not met, the trial court's findings and decision will be upheld. In **Baine v. Beckstead**, 10 Utah 2d 4, 11, 347 P.2d 554 (1959), this court stated that, "In attacking it, (the record), the burden was upon the defendants to affirmatively show error, failing which, the action of the trial court is deemed to be correct." This point was reiterated recently in **Brown v. Turner**,Utah 2d....., 440 P.2d 986, 969 (1968), a habeas corpus appeal in which the court said, "If the established rules of procedure are followed they assure ample protection of the rights of one who is accused of crime. After this has been done and a judgment has been rendered all presumptions favor its validity and the burden of showing to the contrary is upon one who attempts to upset it." The Supreme Court of Washington in **Ex parte Tugus**, 41 Wash. 2d 33, 246 P.2d 851 (1952) held: "In habeas corpus proceedings . . . the findings of the trial court will not be disturbed unless the evidence clearly preponderates against them."

In this case, the respondent contends that appellant has failed to sustain his burden of showing that his plea of guilty was involuntarily entered.

The trial court went the extra mile to insure and safeguard appellant's constitutional rights. The record shows the court appointed counsel over appellant's objection (Tr. 80).

The record further shows that defendant knew the consequences of his plea; it was mentioned at trial, at the arraignment, and before the court accepted his plea.

The testimony of appellant's counsel shows that he made every effort to inform appellant of the seriousness of the charge and the consequences: "...so I tried to explain to them the seriousness of the charge and the consequences and the possibility of things." (R. 49) Defendant didn't want a trial. "They didn't want the trial, in other words, and were quite adamant to the effect that they wanted to get it over with and not go through a trial." R. 53) Counsel informed the defendant of the consequences of a guilty plea (R. 54); the defendant was further advised of the consequences of the guilty plea (R. 56).

It has been held that a presumption exists that the attorney has discharged his duties and "... this presumption is not overcome by the uncorroborated statements of the petitioner in a habeas corpus proceeding." **Dexter v. Crouse**, 192 Kan. 151, 386 P.2d 263, 266 (1963). Here, the record shows the attorney informed defendant of the consequences of a guilty plea and he knew what these consequences were.

When one looks at the record and the fact that defendant was previously convicted of a felony in Idaho, and served part of a sentence because of a guilty plea, it is reasonable that appellant knew the consequences of his plea. It was stated at the arraignment that the sentence was a term in the State Prison; defense counsel's testimony shows that he

informed appellant of the consequences of a plea of guilty; appellant's previous conviction based on a guilty plea, point to one reasonable conclusion that appellant knew the consequences of his guilty plea and that the plea was voluntarily made. Appellant could not prove any coercion and has not sustained his burden of showing clearly that the plea was not voluntarily made. See **Workman v. Turner**, 19 Utah 2d 1, 425 P.2d 402 (1967).

The rationale of the Utah Supreme Court in reviewing habeas corpus proceedings, as stated by Mr. Justice Crockett in **Brown v. Turner, supra**, is applicable in this case. After stating that the burden is upon one attempting to upset a conviction to show his rights were impaired, the court said:

... When such an attempt is made the administration of justice is best served by directing the inquiry to this foundational question: Was substantial justice done and has guilt been established? While on the one hand we honor the observance of the rights of the individual in order to protect the innocent, on the other we cannot be oblivious to the necessity of protecting rights of the public to be kept safe from crime by encouraging effective law enforcement.

POINT II

THE TRIAL JUDGE HAS NO DUTY TO INQUIRE INTO THE VOLUNTARINESS OF A GUILTY PLEA WHEN DEFENDANT IS REPRESENTED BY COUNSEL ESPECIALLY WHEN IT IS REASONABLE TO BELIEVE THE PLEA IS VOLUNTARILY MADE.

Utah Law requires an explanation of the con-

sequences of a plea of guilty when defendant is not represented by counsel. Utah Code Ann. § 77-246 (1953). It is up to the discretion of the trial judge to refuse to accept a plea. Utah Code Ann. § 77-247 (1953). The trial judge, in his discretion, accepted the plea and where counsel is present, he has no duty to inform the defendant of the consequences of such a plea. It is reasonable for a trial judge to be able to rely on defense counsel adequately protecting the interests of his client and relating to them the consequences of their desired action. It is hard to imagine any difference in the outcome if the judge had specifically stated the possible sentence to appellant. Everything was done by counsel to inform them of the consequences of the plea, the seriousness of the charge and advisability of a trial. The record shows the judge mentioned the effect of guilty plea would be a prison term. (Tr. 81, 82) If after all that was done to clarify to defendant the consequences of what he was doing, and defendant was confused, although it is hard to imagine how he was still confused; [see argument, point I], then nothing could have been done to erase this purported confusion. The argument of appellant's confusion is based on appellant's uncorroborated testimony and standing alone is not enough to overcome the presumption of his attorney performing his duties. See **Dexter v. Crouse**, *supra*.

CONCLUSION

Appellant's plea was voluntarily made and the

record shows that the consequences of his plea were explained to him. Every effort was made to insure his constitutional rights, counsel informed him on the consequences, and he had previously served time in the Idaho State Penitentiary based on a guilty plea. All these facts lead to a reasonable conclusion that defendant's plea was voluntary and informed when made. Appellant failed to sustain his burden of showing that the plea was involuntary and uninformed based on the record and the evidence.

Respectfully submitted,

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